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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH COSMO CIAPPINA,

Defendant and Appellant.

C044103

(Super. Ct. No.
011636)

A complaint filed in March 2001 charged defendant Joseph Cosmo Ciappina with 13 sex offenses committed from 1993 to 1994 against a single young victim. These charges were filed pursuant to Penal Code section 803, subdivision (g), which provides that, notwithstanding any other statute of limitations, a "criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of [certain enumerated sex offenses]."

(Unspecified statutory references that follow are to the Penal Code.)

Defendant entered negotiated pleas of no contest to counts 4 (§ 288a, subd. (b)(2)--oral copulation with a person under the age of 16) and 6 (§ 286, subd. (b)(2)--sodomy with a person under the age of 16). The trial court dismissed the remaining charges and sentenced defendant to a prison term of two years eight months.

Having obtained a certificate of probable cause, defendant appeals, asserting the application of section 803, subdivision (g) to the charged offenses violates *ex post facto* and due process provisions of the United States Constitution. We disagree and affirm the judgment.

DISCUSSION

Given the nature of defendant's claims on appeal, we dispense with the usual recitation of the underlying facts and instead turn directly to the issues presented.

Defendant was charged with sex offenses against a person under 16 years of age. These offenses were alleged to have occurred in 1993 and 1994 and had statute of limitations periods ranging from three to six years. (§§ 800, 801.)

Enacted in 1993 and effective January 1, 1994, section 803, subdivision (g) permits prosecution of certain sex offenses committed on persons under the age of 18 within one year of the date the victim reports the crimes to law enforcement authorities, regardless of any other limitations period.

Relying in large part on *Stogner v. California* (2003) 539 U.S. ____ [156 L.Ed.2d 544] (*Stogner*), defendant contends the application of this extended limitations period to his case violates the *ex post facto* clause of the United States Constitution. We do not agree.

Stogner held that section 803, subdivision (g) violated *ex post facto* principles when applied to crimes that were already time-barred. In other words, the statute could not be utilized to revive a previously time-barred prosecution. Here, however, the offenses were not time barred when section 803, subdivision (g) was enacted. In fact, the critical dates relating to the offenses and the statute are identical; the offenses occurred in 1993 and 1994, the same timeframe in which section 803, subdivision (g) was enacted and became effective.

This case therefore does not present a situation in which a time-barred offense was revived, but instead one in which an unexpired statute of limitations was extended. *Stogner* itself acknowledged that "courts have upheld extensions of *unexpired* statutes of limitations" (*Stogner, supra*, 539 U.S. at p. ____ [156 L.Ed.2d at p. 556]), and that "to hold that . . . a law is *ex post facto* does not prevent the State from extending time limits for the prosecution of future offenses, or for *prosecutions not yet time barred*." (*Id.* at p. ____ [156 L.Ed.2d at p. 565], italics added.)

Several California courts have rejected the claims defendant makes here. For example, in *People v. Robertson* (2003) 113 Cal.App.4th 389, 393-394, the Fifth District Court of

Appeal rejected an *ex post facto* argument identical to that raised here, holding: "Section 803, subdivision (g) was retroactive for instances of unexpired statutes of limitations at the time it was originally passed in 1994. Because the statute of limitations in count 1 had not expired when this section went into effect in 1994, the defendant was properly prosecuted under this new statute extending the statute of limitations."

In *People v. Renderos* (2003) 114 Cal.App.4th 961, 965, the First District Court of Appeal, Division Three held that "the only consequence of *Stogner* is that any enumerated crime must be committed or the limitations period in sections 800 or 801 must expire after January 1, 1994 (the effective date of the statute) in order for the extended one-year period to apply. Because the limitations period in section 800 for all the offenses charged in this case expired after January 1, 1994, section 803(g) does not violate any constitutional provision against *ex post facto* laws." The court concluded that the prosecution within one year of the victim's report of abuse was therefore proper, notwithstanding any other limitation period. (*Id.* at p. 966.)

Similarly, in *People v. Superior Court (German)* (2004) 116 Cal.App.4th 1192, 1194-1197, the Second District Court of Appeal, Division Four held that application of section 803, subdivision (g) to crimes in which the statute of limitations had not yet run did not implicate *ex post facto* concerns.

We reach the same conclusion. The statute of limitations on the charged offenses had not run when section 803,

subdivision (g) became effective in January 1994. Consequently, there is no *ex post facto* violation in applying its provisions to the charges against defendant.

In a variation on a theme, defendant contends the application of section 803, subdivision (g) also raises various due process concerns. Defendant's claims are based on the faulty premise that an expired statute of limitations was revived to prosecute him. For example, he suggests it is impossible to mount an adequate defense years after an offense was alleged to have occurred. As the United States Supreme Court explained in *Stogner*, "[A] statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. [Citation.] And that judgment typically rests, in large part, upon evidentiary concerns--for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable. [Citations.] Indeed, this Court once described statutes of limitations as creating 'a presumption which renders proof unnecessary.' [Citation.] [¶] Consequently, to resurrect a prosecution *after the relevant statute of limitations has expired* is to eliminate a currently existing conclusive presumption forbidding prosecution, and thereby to permit conviction on a quantum of evidence where that quantum, at the time the new law is enacted would have been legally insufficient." (*Stogner, supra*, 539 U.S. at p. ____ [156 L.Ed.2d at pp. 554-555], italics added; see also *People v. Frazer* (1999) 21 Cal.4th 737, 770-771, overruled on other grounds in *Stogner*,

supra, 593 U.S. at p. ____ [156 L.Ed.2d at p. 565].) These concerns are not present here because, as we have already discussed, defendant's case involved the extension of an *unexpired* statute of limitations. There is no due process violation.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

SIMS, Acting P.J.

BUTZ, J.